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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KIM P. PIMMEL and
MARCOS WESKAMP

Appeal 2015-007750
Application 12/271,858
Technology Center 2400

Before JOHN A. EVANS, JOHN P. PINKERTON, and
CARL L. SILVERMAN, *Administrative Patent Judges*.

PINKERTON, *Administrative Patent Judge*

DECISION ON APPEAL

Appellants[1] appeal under 35 U.S.C. § 134(a) from the Examiner's Non-Final Rejection of claims 1–29, which constitute all of the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

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[1] Appellants identify Adobe Systems Incorporated as the real party in interest. App. Br. 2.

STATEMENT OF THE CASE

Introduction

Appellants' disclosed and claimed invention is generally directed to content mirroring. Spec. ¶ 1.[2] As described in the Specification, "a content mirroring session is a communication session during which content (e.g., movies, home videos, televisions programming, picture slideshows, application graphical user interfaces, web pages, music or other audio content, and so forth) is presented or accessed (e.g., concurrently, simultaneously, or near simultaneously) on at least two computing devices." *Id.* at ¶ 8.

Claim 1 is representative and reproduced below (with the disputed limitation *emphasized*):

> 1. A method comprising:
>
> determining that a first device is targeting a second device based on a location and an orientation of the first device relative to the second device;
>
> *responsive to determining that the first device is targeting the second device, displaying a user interface element on a display of the first device, the user interface element identifying the second device and indicating that the first device is authorized to establish a content mirroring session with the second device*, the content mirroring session involving the simultaneous presentation of content on the first device and on the second device; and

[2] Our Decision refers to the Non-Final Action mailed July 21, 2014 ("Final Act."); Appellants' Appeal Brief filed Jan. 2, 2015 ("Br."); the Examiner's Answer mailed June 5, 2015 ("Ans."); and, the original Specification filed Nov. 15, 2008 ("Spec.").

communicating a request from the first device to establish the content mirroring session with the second device.

Rejections on Appeal

Claim 28 is rejected under 35 U.S.C. § 112(b) or 35 U.S.C. § 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention. Non-Final Act. 2–3.

Claims 1–29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bucher et al. (US 2008/0010501 A1; published Jan. 10, 2008) ("Bucher") and Lessing (US 2007/0239981 A1; published Oct. 11, 2007). Non-Final Act. 3–20.

Appellants' Contentions

Appellants contend that claims 1–29 are not obvious over the combination of Bucher and Lessing for at least the following reasons:

1. Bucher and Lessing, even if combined, do not teach or suggest "determining that a first device is targeting a second device based on a location and an orientation of the first device relative to the second device," as recited by claims 1, 23, and 28.

2. The Examiner has failed to give the term "targeting," as recited by claims 1, 23, and 28, its broadest reasonable interpretation in light of the specification.

3. The Examiner has failed to give the term "orientation," recited by claims 1, 23, and 28, its broadest reasonable interpretation in light of the specification.

4. Bucher and Lessing, even if combined, do not teach or suggest, "analyzing the location information to determine that the first

device is in a physical environment that includes a second device with which the first device has authority to establish a content mirroring session," as recited by claims 17 and 20.

5. Bucher and Lessing, even if combined, do not teach or suggest, "a server comprising . . . processor-implemented location logic to determine . . . that the first device is in a physical environment that includes the second device with which the first device has authority to establish a content mirroring session," as recited by claims 26 and 27.

6. Bucher and Lessing, even if combined, do not teach or suggest, "a server comprising ... processor-implemented location logic to . . . cause the network interface device to communicate object recognition information to the first device, the object recognition information for use by the first device in determining the first device is targeting the second device," as recited by claim 27.

7. Bucher and Lessing, even if combined, do not teach or suggest, "responsive to determining that the first device is targeting the second device, displaying a user interface element on a display of the first device," as recited by claims 1 and 28.

8. Bucher and Lessing, even if combined, do not teach or suggest, "in response to determining that the first device is in the physical environment, causing display of a user interface element on a display of the first device," as recited by claim 17.

9. Bucher and Lessing, even if combined, do not teach or suggest, "a user interface element . . . indicating that the first device is authorized to establish a content mirroring session with the second device," as recited by claims 1, 17, 23, and 28.

10. One of ordinary skill in the art would not be motivated to combine Bucher and Lessing.

Br. 16–17.

ANALYSIS

Rejection of Claim 28 under 35 U.S.C. § 112, second paragraph

The Examiner rejected claim 28 as being indefinite because it recites the limitation "the location," and the Examiner finds "[t]here is insufficient antecedent basis for this limitation in the claim." Non-Final Act. 2–3. In the Appeal Brief, Appellants do not argue the Examiner erred in making this rejection. Thus, we *pro forma* sustain the Examiner's rejection of claim 28 under 35 U.S.C. § 112, second paragraph, for indefiniteness.

Rejection of Claims 1–29 under 35 U.S.C. § 103(a)

Claims 1–19, 23–25, 28, and 29

Regarding Appellants' contention 9 above, Appellants contend Bucher and Lessing, even if combined, do not teach or suggest "displaying a user interface element on a display of the first device, the user interface element identifying the second device and indicating that the first device is authorized to establish a content mirroring session with the second device," as recited in claim 17, and as similarly recited in claims 17, 23, and 28. Br. 30–31.

In the Non-Final Action, the Examiner cited Bucher as teaching this limitation. Non-Final Act. 3 (citing Bucher ¶¶ 9, 22, 28, 40, 41, 54). In the Answer, the Examiner finds Bucher teaches "the device requesting a mirroring session" and, "[i]n response, authorization is granted." Ans. 12 (citing Bucher ¶¶ 11, 12, 21, 22). The Examiner also finds Lessing teaches "the user interface of the first device configured to present [a] plurality of separate objects, where each of the objects are separately touchable to execute the related communication action." *Id.* (citing Lessing ¶¶ 10–14, 22, 50–52).

We are persuaded by Appellants' arguments that the Examiner has erred. Regarding Bucher, Appellants argue, and we agree, "Bucher does not describe any sort of authorization with respect to mirroring content between two devices." Br. 30. Appellants also argue, even assuming *arguendo* that the mirroring of data in response to a request, as taught by Bucher (*see* ¶¶ 11, 12, 21, 22), is an "authorization," "simply authorizing a device to mirror does not teach, suggest, or imply that a user interface element indicating that the first device is authorized to establish a content mirroring session with a second device is displayed." *Id.* at 31. Appellants further argue the feature of Bucher relied on by the Examiner involves an established session, whereas the "the display of the user interface element recited by claims 1, 17, 23, and 28 occurs prior to a request to establish a content mirroring session is communicated (i.e., the session has not yet been established)." *Id.* We agree with these arguments as well because any authorization implied or suggested by an established connection does not teach or suggest a user interface element indicating a first device is authorized to establish a content mirroring session, as recited in the claims. That is, the claimed authorization proceeds establishing of the mirroring session, while Bucher's authorization is implied from and after the mirroring session is established. Although Appellants did not file a Reply Brief, we have reviewed the portions of Lessing cited by the Examiner in the Answer and find they also do not teach or suggest the disputed limitation of claims 1, 17, 23, and 28. At best, these portions of Lessing would imply authorization from a mirroring connection being established, but as discussed, the disputed limitation requires a user interface element indicating authorization prior to establishing the content mirroring session.

Thus, we do not sustain the Examiner's rejection of claims 1, 17, 23, and 28, as well as the rejections of dependent claims 2–16, 18, 19, 24, 25, and 29.[3]

Claim 20

Regarding Appellants' contention 9 above, Appellants argue Bucher and Lessing, even if combined, do not teach or suggest "receiving, from a first device, location information for the first device," and "analyzing the location information to determine that the first device is in a physical environment that includes a second device with which the first device has authority to establish a content mirroring session," as recited by claim 20.[4] Appellants argue Lessing "does not mention that the data [ ] exchanged between devices includes 'location information' of one of the devices." Br. 24. Appellants also argue there is no need for the devices to exchange location information in Lessing as the devices "are either in communication range, or they are not." *Id.* at 24–25. Appellants further argue in Lessing "there is no process by which location information is received or analyzed because the devices are simply known to be within communication range if they are capable of communicating." *Id.* at 25.

The Examiner finds Lessing teaches the disputed limitations of claim 20:

> Lessing teaches positioning a first device within a particular range of the second device as well as holding the first device in

[3] Because we are persuaded by Appellants' argument 9 that the Examiner erred in rejecting claims 1, 17, 23, and 28, Appellants other arguments relating exclusively to these claims are moot.

[4] Although Appellants make this argument with respect to both claims 17 and 20, we consider this argument only with respect to claim 20 because, as discussed *supra*, we do not sustain the Examiner's rejection of claim 17.

> front of or adjacent to the second device and establishing a communication connection. Objects are displayed on the first device upon detection of the second device in contact with the first device (paragraphs [0005, 0036-38, 0046-50, 0076, 0078]).

Ans. 7; *see also* Non-Final Act. 12–13.

We are not persuaded by Appellants' arguments, but instead, for the reasons stated by the Examiner, we agree with the Examiner's findings and find Lessing teaches or at least suggests the disputed limitations of claim 20.

Claims 26 and 27

Regarding Appellants' contention 5 above, Appellants argue Bucher and Lessing, even if combined, do not teach or suggest, "a server comprising . . . processor-implemented location logic to determine . . . that the first device is in a physical environment that includes the second device with which the first device has authority to establish a content mirroring session, as recited by claims 26 and 27." Br. 25–26. In particular, Appellants argue "none of the features relied upon from Lessing in setting forth the rejection of claims 26 and 27 are included in, performed by, or otherwise involve a server." *Id.* at 26.

The Examiner finds Bucher teaches "the device interacting with multiple content providers (i.e. server) via a wired/wireless connection such as the Internet. The device is able to mirror data when within range/proximity of the network (paragraphs [0025-27])." Ans. 8. The Examiner also finds Bucher in combination with Lessing teaches the disputed limitation of claims 26 and 27. Ans. 9. Appellants did not file a Reply Brief and have not provided persuasive arguments to rebut the Examiner's findings. Accordingly, we agree with the Examiner's findings and find a preponderance of the evidence establishes the combination of

Bucher and Lessing teaches or suggests the disputed limitation of claims 26 and 27.

Regarding Appellants' contention 6 above, Appellants argue, in the rejection of claim 27, the Examiner failed to address the limitation "a server comprising . . . processor-implemented location logic to . . . cause the network interface device to communicate object recognition information to the first device, the object recognition information for use by the first device in determining the first device is targeting the second device." Br. 26–27. The Examiner finds "Bucher teaches the device interacting with multiple content providers (i.e. server) via a wired/wireless connection such as the Internet. The device is able to mirror data when within range/proximity of the network (paragraphs [0025-27])." Ans. 9. The Examiner also finds Bucher in combination with Lessing teaches the disputed limitation of claims 26 and 27. *Id.* at 10. Appellants did not file a Reply Brief and have not provided persuasive arguments to rebut the Examiner's findings. Accordingly, we agree with the Examiner's findings and find a preponderance of the evidence establishes the combination of Bucher and Lessing teaches or suggests the disputed limitation of claim 27.

Regarding Appellants' contention 10 above, Appellants argue the Examiner "has articulated reasoning (e.g., that one of ordinary skill in the art would find it obvious to implement or incorporate Lessing's location determination in Bucher), but has failed to support such reasoning with rational underpinnings." Br. 32. Appellants also argue "the Examiner has failed to articulate any reasoning why one of ordinary skill in the art would be motivated to combine Bucher and Lessing, and the Examiner has also

failed to articulate any supposed advantage of such a combination." *Id.* at 33.

> In regard to combining Bucher and Lessing, the Examiner finds:
>
> In this case, combining Lessing with Bucher provides a visual indicator when the NFC interface of the first device is in communicative connection with a second NFC interface of a second device. Also, objects are displayed to the first device to establish a communication connection with the second device (Lessing, paragraphs [0018, 0020]).

Ans. 13.

We find the Examiner provides sufficient articulated reasoning having a rational underpinning, such that a person of ordinary skill in the art would have been motivated to combine the teachings of Bucher and Lessing, so as to render obvious the claimed subject matter. *See KSR Int'l Co. v. Teleflex Co.*, 550 U.S. 398, 418 (2007).

Thus, we sustain the Examiner's rejections of claims 20, 26, and 27, as well as claims 21 and 22, which depend on claim 20 and are not separately argued.

DECISION

We *pro forma* affirm the Examiner's rejection of claim 28 under 35 U.S.C. § 112, second paragraph, for indefiniteness.

We affirm the Examiner's rejection of claims 20–22, 26, and 27 under 35 U.S.C. § 103(a).

We reverse the Examiner's rejection of claims 1–19, 23–25, 28, and 29 under 35 U.S.C. § 103(a) .

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART